

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE
LITIGATION

MDL NO. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO ALL
ACTIONS

Chief Magistrate Judge Marianne B. Bowler

**DECLARATION OF PHILIP D. ROBBEN IN OPPOSITION TO PLAINTIFFS'
MOTIONS FOR A PROTECTIVE ORDER CONCERNING SUBPOENAS ISSUED
TO CERTAIN ABSENT CLASS MEMBER THIRD-PARTY PAYORS**

PHILIP D. ROBBEN, declares, pursuant to 28 U.S.C. § 1746, that:

1. I am associated with the law firm of Kelley Drye & Warren LLP, attorneys for defendant Dey, Inc. in this action. I am admitted to practice *pro hac vice* in this judicial district for the purposes of this action.

2. I make this declaration in opposition to Plaintiffs' Motions for a Protective Order Concerning Subpoenas Issued to Certain Absent Class Member Third-Party Payors. More specifically, I make this declaration to submit certain documents and correspondence in opposition to Plaintiffs' motion.

3. I make this declaration from my own knowledge of the facts and circumstances set forth herein. The source of my knowledge is my review of Kelley Drye & Warren LLP's file on this litigation and my review of the documents and correspondence annexed as exhibits hereto.

4. Annexed hereto as Exhibit A is a true and correct copy of a letter, dated November 29, 2005, from Matthew H. Herndon, of Harvard Pilgrim Health Care, to Irene S. Fiorentinos of Jones Day.

5. Annexed hereto as Exhibit B is a true and correct copy of an order denying Plaintiffs' prior motion for a protective order as to absent class member discovery.

6. Annexed hereto as Exhibit C is a true and correct copy of an order compelling Aetna, Cigna and Humana to produce discovery in this action.

7. Annexed hereto as Exhibit D is a true and correct copy of a transcript of a hearing before Chief Magistrate Judge Marianne B. Bowler, on January 27, 2005, reflecting an order compelling Health Net to produce discovery in this action.

8. Annexed hereto as Exhibit E is a true and correct copy of an affidavit of service of as to Tufts Associated Health Plans, Inc.

9. Annexed hereto as Exhibit F are true and correct copies of selected pages from the transcript of a hearing before Chief Magistrate Judge Marianne B. Bowler on September 27, 2004.

10. Annexed hereto as Exhibit G is a true and correct copy of an e-mail, dated November 15, 2004, sent from Sean Matt, of Hagens Berman, to Jared Winnick, of Davis Polk & Wardwell.

11. Annexed hereto as Exhibit H is a true and correct copy of an e-mail, dated February 10, 2005, sent from John Macoretta, of Spector, Roseman & Kodroff, to Jared Winnick, of Davis Polk & Wardwell.

I declare under penalty of perjury that the foregoing is true and correct. Executed
on November 29, 2005.

s/ Philip D. Robben

PHILIP D. ROBBEN

CERTIFICATE OF SERVICE

I certify that on November 29, 2005, a true and correct copy of the foregoing,
with exhibits, was served on all counsel of record by electronic service pursuant to Paragraph 11
of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and
notification to all parties.

s/ Philip D. Robben